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CHARLES ELMORE CROPLEY
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No. 294

# United States of America

## IN THE SUPREME COURT OF THE UNITED STATES

3145.650

MARCELINO LONTOK,
*Petitioner,*

*– versus –*

GREGORIO BATTUNG and CANUTO FERMIN,
*Respondents.*

Supreme Court
G. R. No. 47890
Certiorari

## PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE SUPREME COURT OF THE PHILIPPINES DENYING A PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE COURT OF APPEALS OF THE PHILIPPINES.

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TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES.

COMES now your petitioner, and respectfully files petition for a writ of certiorari to review the decision rendered by the Supreme Court of the Philippines, which denied a petition for a writ of certiorari to review a decision of Court of Appeals of the Philippines.

# I

## STATEMENT OF THE CASE.

1.—That in Civil Case No. 5225 of the Court of First Instance of Rizal, Philippines, wherein MARCELINO LONTOK, the herein petitioner, was the plaintiff, against GREGORIO BATTUNG AND CANUTO FERMIN the herein respondents, were the defendants, decision was rendered against the plaintiff.

2.—That an appeal was perfected to the Court of Appeals against the said decision, and once the case was forwarded to the said Court of Appeals due course was given.

3.—That the Court of Appeals of the Philippines was created by the Commonwealth Act No. 3, which was latter amended by Commonwealth Act. No. 259, and in accordance with the last Act the Court was divided into three (3) Divisions, namely First, Second and Third Division.

4.—That the above-mentioned case was assigned to the Second Division, composed of the Justices Honorables: Pedro Tuason, José Lopez Vito, Sabino Padilla, Alex Reyes and Cesar Bengson, and it was argued before the said Division.

5.—That after the case was submitted for the decision to the Second Division of the Court of Appeals, without notice to the parties, the First Division of the said Court of Appeals, composed of Justices: Honorables: Ricardo Paras, Domingo Im-

perial, José Honteveros, and Mariano A. Albert rendered decision in the case affirming the decision rendered by the Court of First Instance of Rizal, Philippines.

6.—That a petition for a writ of certiorari was filed to the Supreme Court of the Philippines, requesting that the decision of the Court of Appeals be reviewed and be declared null, and void, but the said Supreme Court of the Philippines denied the petition, hence this petition is now filed to this Honorable the Supreme Court of the United States.

## II

## GROUND FOR THE PETITION OF CERTIORARI.

Your petitioner respectfully submit that the decision rendered by the Supreme Court of the Philippines denying the petition for a writ of certiorari to review the decision of the Court of Appeals, should be reviewed by this Honorable Supreme Court of the United States, on the following grounds:

1.—That the First Division of the Court of Appeals of the Philippines had no jurisdiction to rendered decision in the case; because the case was argued and submitted to the Second Division of the said Court, and in accordance with the provisions of Section 145-K of the Administrative Code as amended by Section 8 of the Commonwealth Act No. 259, if the said Second Division should failed to reach a decision, the case should have been heard and determined by the Court **in banc.**

2.—That admiting for the sake of argument, that the said First Division of the said Court of Appeals, could validly rendered a decision in the case, the said Division did not take into consideration the documentary evidence introduced during the trial by both parties; when the said documentary evidence merit more credence;

3.—That when the First Division of the Court of Appeals rendered decision the case without notice to the parties that the case was transferred to the said Division, when the members of the said Division did not take part in the hearing of the case, but only members of the Second Division, the said First Division, acted in abused of its authority, and deprived your petitioner of his right to be heard and argue the case, in accordance with the Constitution of the Commonwealth, the Supreme Law in this jurisdiction.

4.—That the decision rendered by the First Division of the Court of Appeals of the Philippines, is null, and void, not only because the said Division acted without authority and jurisdiction, but it violates the principles of Law, in this Jurisdiction, that oral argument is an intergral part of the trial of a case.

5.—That in view of the fact that the case was argued and submitted for the decision before the Second Division and the First Division without notice, nor hearing, decided the case, your petitioner was deprive of his right to be heard and the decision was rendered without due process of law.

6.—That your petitioner did not enjoy the privilage of fair and impartial trial.

## III

## REASON WHY THIS PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

### I

### THE CREATION OF THE COURT OF APPEALS AND THE DISTRIBUTION CASES.

The law creating the Court of Appeals in Commonwealth Act No. 3 which later has been amended by Commonwealth Act No. 259. Both Acts Amended an Administrative Code. Art. 145-K of the Administrative Code as amended by Sec. 8 of the Commonwealth Act No. 259 refers of the distributions of cases in the said Court of Appeals and the members the said Court who may decide.

> "Sec. 145-K. **Distribution of cases between divisions.**— All of the cases of the Court of Appeals shall be alloted between the three divisions thereof for trial and decision and the affirmative vote of the majority of the members of each division shall be necessary for the pronouncement of a judgment. Whenever in any criminal case submitted to a division, the said division, or any member thereof, should be of the opinion that the penalty of death of life imprisonment should be imposed, the said Court shall refrain from entering judgment thereon and shall forwith certify the case of the Supreme Court for fi-

> nal determination, as if the case has been brought before it on appeal. Whenever a division of the Court of Appeals fails to reach a decision in a case **submitted** to it, or whenever such division shall so order, or whenever the presiding justice, in the exercise of his sound discretion, so ordered, **the case shall be heard and determined by the court sitting in banc**, the affirmative vote of at least eight justices being necessary for the pronouncement of a judgment."

It is evident that this article has been included for the Court of Appeals to comply. Upon examination of the record it appears clear that they have employed other methods in disposing this case which method is not in accordance with the law.

The law has provided the method which is more convenient for the disposition of the cases, and the evident reason for such selection, is for the Court of Appeals which it creates, not to take the liberty to follow and create another.

> "There are in general three jurisdictional elements in every valid judgment, namely, jurisdiction of the subject matter, jurisdiction of the person and **the power or authority to render the particular judgment.** For the absence of any of these elements, when properly apparent the judgment may be vacated at any time, whether before or after the term or the time, limited by statute for motions on

statutory grounds, either on motion or of its volition without suggestion." (1 Freeman on Judgment, pp. 444-445)

"Sec. 336.—SOURCES AND ACQUISITION OF JURISDICTION.— Generally.— Jurisdiction is conferred by the Constitution and laws of the country in which they are situated, 'authorizing them to hear and determined cause between parties, and to carry their judgment into effect.' The grant of jurisdiction must proceed from competent authority. Where a court acts under and by virtue of a certain act, and such is unconstitutional, its judgment are void." (1 Freeman on Judgment, p. 674)

In this jurisdiction the law provides (Art. 145-K) clearly that once a case is submitted to a Division of the Court of Appeals, no other Division of the said Court can decide the same, except the **Court in banc.**

The Court of Appeals is not authorized to reform or repeal the disposition of the article above quoted.

It is an elemental that the rules must not change or reform the laws:

"The legislature, subject to the constitution, may establish rules of procedure for the courts, and where it enacts a positive rule, the court has no discretion. Where the legislature fails to prescribed methods or procedure,

the parties are relegated to the former practice of the court."

"While courts are very generally authorized by statute to make their own rules for the regulation of their practice and the conduct of their business, a court has, even in the absence of any statutory provision or regulation in reference thereto, inherent power to make such rules, subject to limitations based on reasonableness and **conformity** to constitutional and **statutory** provisions.

"**Court rules are subservient to statutes, and in case of conflict the statutes,** if constitutional, prevails. x x x x A rule of Court made to carry out a statute cannot broaden the statutes."

"**Special rules for particular cases may sometimes,** under statutory authority, be made when justices so requires, although the effect may be to exempt such cases from the operation of the ordinary rules of court. However, it has been held that courts have not inherent power to extend an existing practices to meet a particular situation or to create a new procedure without legislation."

"The principle that Court may prescribe reasonable rules, **not contravening the constition or statutes,** nor affecting substantive law has been applied to rules regulating va-

rious matters of practices and procedure." (21 C. J. S. Sec. 168-171, pp. 260-266).

The fact that the First Division of the Court of Appeals of the Philippines decided this case, constitutes a violation of the provision of Art. 145-K of the Administrative Code as amended by Sec. 8 of Commonwealth Act. No. 259.

To authorize a Division of the Court of Appeals to take a case submitted to another Division is tantamount to accept a practice that any member of the said Court may take a case to decide as he pleases.

This practice will be indeed not be in accordance with the principle of equitable justice.

## II

## THE HEARING FOR ORAL ARGUMENT OF THE CASE AT BAR

The case at bar was set for hearing on November 9th, 1939, for oral argument before the Second Division of the said Court, appearing there at and orally argued the Attorneys of both parties. The Second Division was then composed of Justices, Honorable: Pedro Tuason, Sabino Padilla, Alex Reyes, José Lopez Vito and Cesar Bengson.

The above mentioned Second Division did not decide the case, nor did it adopt any resolution declaring that they have not come to a conclusion, or that they transmitted it to the Court **in Banc**, nor did there exist any order of the Chief Justice of the

said Court of Appeals that the same be transferred to the **Court in Banc.**

In accordance with the provisions of Art. 145-K above quoted, after the case has been submitted to the Second Division it was their duty to decide the same. If they could not reach any conclusion regarding the decision, it should be transferred to the **Court in Banc**, which shall decide the same. No division of the said Court of Appeals, and even the Court in Banc has authority to assign the case to another division. To do so is to violate the provision of the law to the effect that **"the case must be heard and determined by the Court in Banc and if it shall be necessary the affirmative vote of at least eight justices, must be had for the pronouncement of a decision."** (Art. 145-K).

After the trial of the case before the Second Division, and after the same has been submitted for decision in said division, neither the petitioner nor his Attorney was notified about the transferred of the case to the First Division of the Court of Appeals, nor can there be found in the records any indication of such an order.

The petitioner did not have the opportunity to argue before the new division about the merits of the case, and even if what we may argue is of less judicial weight, the argument itself, is a part of the procedure, of which we must not be deprive of.

## III

## THE DUE PROCESS OF LAW

Inaccordance with the Law in this jurisdiction oral argument is an integral part of the hearing of

a case in appeal, though it may be renounced by the parties.

In the case at bar, no renunciation was ever made, on the contrary when the case was set for hearing on the 9th of November, 1939, the parties appeared and argued the case before the Second Division of the said Court of Appeals.

Having not received notification to the effect that the case was transferred to the First Division, your petitioner was deprive of his right to be heard by the said First Division because the case was argued before the Second Division, with different Justices.

The petitioner has been denied of his right to be orally heard, and in fact the case was decided by a Division who was not able to hear the oral argumentation of the case.

To deprive your petitioner of his right to oral argument which forms part of the proceedings, is a very serious error, it affect the stability of public trust in our courts in this jurisdiction.

The existence of the right to verbally argue a case is based on the right guaranted by the Constitution and the Law which created the Court of Appeals, and it is not for the said Courts to disregard such right. It is the duty of all Court in this Jurisdiction to respect the right of every litigant for the better administration of Justice.

WHEREFORE, your petitioner most earnestly request that this petition be granted and that due

course be given to review the decision of the Supreme Court of the Philippines denying the petition for a writ of certiorary.

Manila, Philippines, June 21st, 1941.

Sgd. Marcelino Lontok
MARCELINO LONTOK
Attorney Pro Se,
Kneedler Bldg.,
Manila, Philippines.

SUBSCRIBED AND SWORN TO BEFORE ME by Mr. MARCELINO LONTOK in the City of Manila, this 24th day of June, 1941. A.D. The affiant has exhibited to me his residence certificate No. 3047812, issued at San Juan, Rizal, on the 30th, day of April, 1941.

Sgd. Luis Reclaro
Notary Public
Until December 31st, 1942

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